

§ 12.19

delivering a copy thereof, in proper form, to the Commission at its principal office in Washington, DC, addressed to the Office of Proceedings, Attention of the Proceedings Clerk. The answer may be filed in person, during normal business hours, or by certified mail, or registered mail with return receipt requested. If filing is by mail, it shall be addressed to the Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

[49 FR 6621, Feb. 22, 1984, as amended at 59 FR 9637, Mar. 1, 1994; 60 FR 49335, Sept. 25, 1995]

§ 12.19 Counterclaim.

A registrant may, at the time of filing an answer to a complaint, set forth as a counterclaim: (a) Facts alleging a violation and a request for a reparation award that would be a proper subject for a complaint under §12.13 of these rules; or

(b) Any claim which at the time the complaint is served the registrant has against the complainant if it arises out of the transaction or occurrence or series of transactions or occurrences set forth in the complaint.

§ 12.20 Response to counterclaim; reply; election of procedure.

(a) *Response to counterclaim.* If an answer asserts a counterclaim, the complainant shall, within thirty (30) days after service upon him of the answer by the respondent: (1) Satisfy the counterclaim as if it were a complaint, in the manner prescribed by §12.17 of these rules; or (2) file a reply to the counterclaim with the Commission.

(b) *Form and content of reply.* Should the complainant, under this paragraph, elect to file a reply to a counterclaim, the reply shall be strictly confined to the matters alleged in the counterclaim and shall conform to the form and content and other requirements set forth in §12.18 of these rules.

(c) *Election of decisional procedure.* If neither the complainant nor the respondent, in the complaint or answer respectively, has previously made an election of the summary decisional procedure or the formal decisional pro-

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cedure, the complainant may make such an election in his reply.

§ 12.21 Voluntary dismissal.

(a) At any time after the Director of the Office of Proceedings has served notification to the parties pursuant to §12.15 of these rules of his determination to forward the complaint to the respondent for a response, either the complainant or the respondent may obtain dismissal of the complaint (or the proceeding, if one has commenced) by filing a stipulation of dismissal, duly executed by all of the complainants and each respondent against whom the complaint has been forwarded (or added as a party in the course of a proceeding); *Provided however*, That if the stipulation is filed after any respondent has filed an answer, the terms of the stipulation shall include a dismissal of any counterclaims in the answer.

(b) A dismissal of a complaint pursuant to this paragraph shall be with prejudice to complainant's right to refile a claim in reparations based upon the same set of facts as alleged in the dismissed complaint. Unless otherwise stated in the stipulation, a dismissal ordered pursuant to this paragraph shall be regarded by the Commission as without prejudice to the parties' right to seek redress in such alternative forums as may be available for adjudication of their claims.

(c) Upon receiving a written stipulation of dismissal which satisfies the requirements of this rule, the official before whom the matter or proceeding is pending shall issue an order of dismissal, and serve a copy thereof upon each of the parties.

(d) This rule shall be applicable at all stages of a reparation proceeding.

§ 12.22 Default proceedings.

(a) *Institution of a default proceeding.* Failure timely to respond to a complaint or a counterclaim, as required by §§12.16 and 12.20 of these rules, or, if applicable, to pay a filing fee required by §12.25(b) or (c), shall be treated as an admission of the allegations of the complaint or counterclaim by the non-responding party, shall constitute a waiver by such party of any decisional procedure afforded by these Rules on